

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)

MDL No.: 2419
Dkt No. 1:13-md-2419 (RWZ)

_____)
THIS DOCUMENT RELATES TO:)

Suits Naming Specialty Surgery Center, PLLC)
_____)

**RESPONSE OF SPECIALTY SURGERY CENTER, PLLC, KENNETH R. LISTER, MD.
AND KENNETH LISTER, M.D., P.C. TO JOINT MOTION FOR ENTRY OF
STIPULATED QUALIFIED PROTECTIVE ORDER REGARDING
PLAINTIFFS' STEERING COMMITTEE'S SUBPOENA TO
CUMBERLAND MEDICAL CENTER, INC.**

Comes now defendants, Specialty Surgery Center, PLLC ("SSC"), Kenneth R. Lister, M.D. ("Dr. Lister") and Kenneth Lister, M.D., P.C. ("Dr. Lister's Practice") (collectively "the SSC Defendants") and herewith responds to the joint motion of the Plaintiff's Steering Committee ("the PSC") and Cumberland Medical Center, Inc. ("CMC") for entry of a Stipulated Qualified Protective Order (Doc. 2841 and 2848).

The PSC and CMC have jointly moved the Court for entry of a Stipulated Qualified Protective Order related to forensic inspection and analysis of all electronic repositories that CMC received from SSC arising out of CMC's acquisition of SSC's assets in June of 2013. While the joint motion recognizes that the computers likely contain information protected by HIPPA and information over which CMC may assert a claim of privilege, confidentiality or proprietary information, the joint motion does not recognize the likelihood that these computers also contain information over which SSC may assert a claim of privilege, work product, confidentiality, or proprietary information.

In the Second Corrected (proposed) Qualified Protective Order (Doc. 2848), CMC and the PSC reference mutually agreed protocols for review, which are incorporated into the proposed order by reference. (See paragraph 1). However, the “Review Protocols” are not attached, and the SSC Defendants are not clear as to what those protocols provide. It is expected that the protocols permit CMC the opportunity to review the information returned by agreed search terms before it is produced to the PSC, in order to assert privilege, confidentiality, or proprietary information.

The SSC Defendants respectfully request that the Court modify the proposed protective order (Doc. 2848) (or enter a separate protective order) to permit the SSC Defendants an opportunity to similarly review the information for privilege, work product, confidentiality, or proprietary information before the information is produced to the PSC.

The SSC Defendants are filing contemporaneously a Motion for Protective Order (with supporting documents) requesting this relief. Rather than repeating the arguments raised in their motion, the SSC Defendants hereby adopt and incorporate by reference the Motion for Protective Order pursuant Fed. R. Civ. P. 26(c) and its Memorandum of Law In Support Of Motion for a Protective Order pursuant to Federal Civil Procedure 26(c), filed contemporaneously herewith.

The SSC Defendants do not object to the Second Corrected (proposed) Qualified Protective Order except to the extent that it does not permit them the opportunity to review the information for privilege before it is produced to the PSC. As explained more fully in their Motion for Protective Order, the computers subject to the PSC’s subpoena likely contain privileged information from SSC, and those privileges continue to protect the information from discovery by the PSC.

Respectfully submitted,

/s/ Kent E. Krause

PARKS T. CHASTAIN*

KENT E. KRAUSE*

ASHLEY E. GENO*

Attorneys for Defendants, Specialty Surgery Center,
PLLC and Kenneth R. Lister, M.D.

BREWER, KRAUSE, BROOKS & CHASTAIN, PLLC

P. O. Box 23890

Nashville, TN 37202-3890

(615) 256-8787 (PTC)

(615) 256-8985 (fax)

pchastain@bkblaw.com

kkrause@bkblaw.com

ageno@bkblaw.com

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

C.J. Gideon, Jr.**

Chris J. Tardio**

Alan S. Bean***

Matthew H. Cline**

315 Deaderick Street, Suite 1100

Nashville, TN 37238

Ph: (615) 254-0400

Fax: (515) 254-0459

chris@gideoncooper.com

Attorneys for the SSC Defendants

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be served via electronic mail or regular US mail to those participants identified as unregistered this 23rd day of May, 2016.

/s/ Kent E. Krause

Kent E. Krause

* Admitted *pro hac vice*